

UNITED STATES DISTRICT COURT  
THE SOUTHERN DISTRICT OF NEW YORK

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GENERAL FABRICS COMPANY

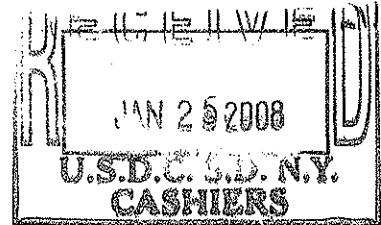
Plaintiff,

Case No.: 08 CV 00047

-against-

UNITED PET GROUP, INC. AND SPECTRUM  
BRANDS, INC.

Defendant.  
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**GENERAL FABRICS COMPANY'S AMENDED COMPLAINT AGAINST  
UNITED PET GROUP, INC. AND SPECTRUM BRANDS, INC.**

Plaintiff, General Fabrics Company (the "Plaintiff"), by its attorneys, Lazarus & Lazarus, P.C., complaining of the Defendants, United Pet Group, Inc. and Spectrum Brands, Inc. (collectively referred to herein as the "Defendants") sets forth and alleges upon information and belief as follows:

**I. JURISDICTION AND VENUE**

1. This action arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et. seq.*
2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and § 1338(a).
3. Venue lies in this district pursuant to 28 U.S.C. § 1391(b)(1) and § 1400(a).

**II. PARTIES**

4. Plaintiff, is a foreign business corporation duly organized and existing under

the laws of the State of Rhode Island, with principal offices located at 253 West 35<sup>th</sup> Street, New York, New York, 10001.

5. United Pet Group, Inc. is, upon information and belief, a foreign business corporation duly organized and existing under the laws of the State of Delaware and maintains a place of business at 1377 Motor Parkway, Islandia, New York 11749.

6. Spectrum Brands, Inc., upon information and belief, is a domestic business corporation registered and duly organized in Wisconsin, with the office of the Registered Agent, located at 601 Rayovac Drive, Madison, Wisconsin, 53711.

7. Defendants, upon information and belief, transact business within this district, derive substantial revenue from intrastate and interstate commerce and have committed tortious acts within this district, and also without this district having injurious consequences within this district, and Defendants are otherwise within the jurisdiction of this Court.

### **III. CAUSE OF ACTION FOR COPYRIGHT INFRINGEMENT** **AGAINST DEFENDANT**

8. No later than January 1, 2006 Plaintiff, a distributor and merchant engaged in the manufacture and sale of various fabric patterns and styles, created an original work of art through its reproduction of a stylized fabric, which original work of art is entitled "Tutti - Fruitti - Cotton".

9. On or about November 2, 2007, Plaintiff applied for copyright registration for

the original work of art entitled "Tutti - Fruitti - Cotton" (the "Pattern").

10. Plaintiff has complied in all respects with the Copyright Act of 1976, 17 U.S.C.A. § 101 et. seq., as amended, and all other laws governing the copyright; has secured the exclusive rights and privileges in and to the copyrights of the reproduction of the Pattern; and has received from the Register of Copyrights Certificate of Registration No. VA - 1-622-840, dated November 7, 2007, a copy of which is attached hereto and made a part hereof as *Exhibit "A"*.

11. Plaintiff has incorporated the aforesaid copyrighted design on fabrics manufactured and sold by Plaintiff.

12. As a result of Plaintiff's expenditure of money and skill in the development and promotion of its copyrighted Pattern, Plaintiff's design, which is used to make fabrics to be sold by Plaintiff, has acquired a substantial market value in the trade.

13. On or about September 20, 2007 Plaintiff learned that Defendants had infringed upon Plaintiff's aforementioned copyrighted Pattern by distributing, offering for sale and/or selling without Plaintiff's consent, pet products entitled "Lazy Pet Products Pyramid Bed" (the "Pyramid Bed") bearing Plaintiff's original Pattern as the pattern for the fabric of the Pyramid Bed.

14. Defendants' act of infringement constitute willful and deliberate infringement of Plaintiff's copyrighted Pattern.

15. Defendants' unauthorized distributing, offering for sale and/or selling

without Plaintiff's consent, the Pyramid Bed bearing Plaintiff's original Pattern resulted in substantial wrongful profits to Defendants, the full extent of which is yet undetermined.

16. Defendants, by the acts aforesaid, have taken advantage of the knowledge and skill of Plaintiff, and of the goodwill developed by Plaintiff, and have capitalized on the market created by Plaintiff for its Pattern.

17. By reason of Defendants' infringement of Plaintiff's copyrighted Pattern, Defendants have greatly diminished the value of Plaintiff's copyright therein resulting in substantial monetary damage and irreparable injury to Plaintiff and unless Defendants are restrained and enjoined by this Court from such infringement, Plaintiff will continue to be irreparably harmed.

18. Plaintiff does not have an adequate remedy at law.

**WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

1. Defendants, their agents, employees, and servants to be enjoined *pendente lite* and permanently from infringing Plaintiff's copyright in any manner, and from publishing, distributing, manufacturing, causing to be manufactured, selling, marketing, or otherwise disposing of any work with the Pattern design copied from Plaintiff's copyrighted reproduction of the works of art.

2. Defendants shall be required to pay to Plaintiff damages in the amount of \$500,000.00 and or statutory damages as allowed by law, which Plaintiff has sustained in consequence of Defendants' aforesaid copyright infringement and unfair trade practices

and unfair competition, and to account for:

- a) all gains, profits, and advantages derived by Defendants from the infringement of plaintiff's copyrights or such damages as the Court deems appropriate within the provisions of the copyright statutes; and
- b) all gains, profits, and advantages derived by defendant through its unfair trade practices and unfair competition.

3. Defendants shall be required to deliver up to be impounded during the pendency of this action all copies of the aforesaid reproduction of Plaintiff's Pattern whether in its possession or under its control, and to deliver up for destruction all infringing copies and all rollers, screens, plates, molds, and other matter for making such infringing copies.

4. Defendants shall pay to Plaintiff the cost of this action and reasonable attorneys' fees to be allowed to Plaintiff by the Court.

5. Plaintiff have such other and further relief as the Court may deem just.

Dated: January 24, 2008  
New York, New York

Respectfully submitted,

**LAZARUS & LAZARUS, P.C.**  
*Attorneys for Plaintiff*

**HARLAN M. LAZARUS, ESQ.** (HML-0268)  
240 Madison Avenue, 8<sup>th</sup> Floor  
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# **EXHIBIT A**



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

Registration Number:

VA 1-622-840

Effective date of registration:

November 7, 2007

**Title**

Title of Work: Tutti - Fruitti - Cotton

Previous or Alternative Title: Tutti Fruitti embossed

Nature of Work: 2 Dimensional Design For Fabric

**Completion/Publication**

Year of Completion: 2006

Date of 1st Publication: January 1, 2006

**Author**

Author: General Fabrics Company

Author Created: 2-Dimensional artwork; Textile design for fabric

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Anonymous: No

Pseudonymous: No

**Copyright claimant**

Copyright Claimant: General Fabrics Company

253 W. 35th St. 11th Floor, New York, NY, 10001

**Certification**

Name: David Odessa

Date: October 11, 2007



IPN#:



Registration #:



Service Request #: 1-19018343

Lazarus & Lazarus  
Harlan M. Lazarus  
240 Madison Avenue  
New York, NY 10016



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Defendant.

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**AMENDED COMPLAINT**

LAZARUS & LAZARUS, P.C.

*Attorneys for Plaintiff*

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New York, New York 10016

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